penalty, bearing in mind that section 304A involves offences of much less gravity than such as would come within the scope of manslaughter in England.

I do not think it is necessary to lay down a different standard of negligence in civil and criminal cases, although, of course, a higher standard of proof is required in the latter cases.

As regards the cases before us, I consider that in Appeal No. 47, Woo Sing was guilty of such negligence as brought him within the scope of the section, though it was not of such a degree of negligence as would have rendered him guilty of manslaughter in England. I think that for the degree of negligence displayed the penalty imposed by the Court below was not inappropriate. However, in the circumstances in view of the delay that has occurred in consideration of the legal aspects of the case, I would substitute a fine of $250 or two months r.i. The disqualification to stand.

The second case (No. 48) is more difficult. I think that negligence was proved and one cannot say a conviction under section 304A was wrong. I think, however, that a fine of $150 or one month r.i. would be an adequate punishment.

Whitton J. : — I have had the advantage of reading the judgment of the learned President, and an in agreement with it subject to saying I think a higher degree of negligence is necessary in order to establish a criminal offence than is sufficient to create civil liability.

Order accordingly.

Solicitors : *Braga & de Souza; Donaldson & Burkinshaw.*

LOW KIM SEONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Wilson J.) September 11, 1954]

[K. L. — Criminal Appeal No. 60 of 1954]

Road Traffic — Motor Vehicles (Construction and Use) Regulations, 1948, reg. 103 — Maintenance of vehicle — Emission of black smoke — Reasonable steps or reasonable care.

In this case the appellant was charged with being the driver of a motor lorry and using the said vehicle on the public road in such a condition as to emit smoke or visible vapour, the emission of which could be prevented or avoided by taking reasonable steps or the exercise of reasonable care contrary to reg. 103 of the Motor Vehicles (Construction and Use) Regulations, 1948, and punishable under s. 8(i) of the Road Traffic Proclamation No. 17 of 1945.

The evidence was that of one witness who stated that he observed the lorry driven by the appellant emitting a lot of black smoke. No other evidence was called. The learned Deputy Public Prosecutor argued that that amounted to evidence that the appellant had committed the offence charged, and that the emission of a lot of black smoke did not necessarily require expert evidence to prove lack of maintenance, and he added: "It is to my mind, common knowledge, that a vehicle fairly well maintained, would not emit a lot of black smoke."

Held: it was for the prosecution to prove that the emission of black smoke was due to the causes alleged in the charge.

MAGISTRATE'S CRIMINAL APPEAL.

Ng Ek Teong for the appellant.

E. Brown (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Wilson J. : — The appellant was charged with the following offence :—

"That you on 8.3.54 at about 12.45 p.m. at Jalan Raja, Kuala Lumpur, being the driver of motor lorry No. BB 5782, did use the said vehicle on the public road in such a condition as to emit smoke or visible vapour, the emission of which could be prevented or avoided by the taking of any reasonable steps or the exercise of reasonable care contrary to Regulation 103 of the Motor Vehicles (Construction and Use) Regulations, 1948, and punishable under Section 8(i) of the R.T.P. 17/45."

It has been argued before me that the charge is bad in law because of duplicity, inasmuch as the charge relates both to smoke and visible vapour in the alternative. Having regard to the conclusions to which I have come, it is not necessary for me to give a decision on this point which would in any case be *obiter dicta.*

The evidence was that of one witness who stated that he observed the lorry driven by the defendant emitting a lot of black smoke. No other evidence was called. It has been argued before me by the Deputy Public Prosecutor that that amounted to evidence that he had committed the offence charged, and that the learned Magistrate was entitled to say, as he did, that the emission of a lot of black smoke does not necessarily require expert evidence to prove lack of maintenance, and he added : "It is to my mind, common knowledge, that a vehicle fairly well maintained, would not emit a lot of black smoke." His knowledge of motor cars and mechanics may be far greater than mine but I could not go so far as to say that the emission of black smoke must necessarily indicate lack of maintenance.

The Deputy Public Prosecutor has also argued before me that the emission of black smoke at any rate raises a *prima facie* case against the appellant under the charge, and that it was for him, if he wished, to show that it was not caused by the failure of taking any reasonable steps or exercising reasonable care to prevent it.

I am unable to agree with this contention and, in my opinion, it was for the prosecution to prove that the emission of black smoke was due to the causes alleged in the charge.

Accordingly, I allowed the appeal and quashed the conviction and ordered that the fine of $50 which had been paid be repaid to the appellant.

Appeal allowed.

Solicitors for the appellant : *Braddell & Ramani.*